



Media/Law Enforcement Recommendations for the Minnesota Department of Public Safety

21CP Solutions

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I. Scope of 21CP Work

In response to issues identified over the course of sustained civil unrest in Minnesota, as throughout the nation, following the murder of George Floyd by Minneapolis Police Officer Derek Chauvin, the Minnesota Department of Public Safety (“DPS”) engaged 21CP to assist DPS in developing recommendations to improve public safety agencies’ ability to support and facilitate the exercise of constitutionally protected speech and assembly during large-scale protest events. More specifically, 21CP focused on practices relating to media in the context of crowd management and policing responsibilities.¹

21CP appreciates the ready access to DPS staff, officials, documents, and to other state personnel as needed throughout this engagement. 21CP also extends its gratitude and appreciation to the many community and media stakeholders who volunteered time and effort towards this engagement – this work could not have been completed without their real-world experience and valuable perspectives.

II. Context of Review

This collaboration was very much rooted in the genuine commitment of DPS to improve their interactions with media and community during demonstrations. However, we note that DPS is, concurrently, a party to active litigation alleging violations of state and federal law arising out of DPS interactions with members of the press during the demonstrations of 2020. We discuss these allegations here solely because they, and the terms of the temporary restraining order (TRO) entered in that case and converted to a preliminary injunction in October 2021, provide useful context for our inquiry and were present during discussions with stakeholders, but emphasize that we do so expressly without intent to comment on the merits of any claim.

The litigation at issue arises out of events over the summer of 2020² and with regard to the State’s handling of protests that followed the death of Daunte Wright in Brooklyn Center in 2021. Included as claims are allegations relating to the use of force and curfew enforcement, as follows:

¹ Emergency Executive Order 21-20 issued April 19, 2021

² https://www.aclu-mn.org/sites/default/files/field_documents/goyette_tro_granted.pdf

Use of force, “including the police firing rubber bullets at a videographer who was a safe distance from other protestors,” and other allegations that members of the press were targeted with force.

Disregarding the Governor’s Curfew Exception for Press, including “orders directing the press to disperse despite the curfew orders expressly exempting the press, and various other acts impeding the press’s ability to observe and report about the protests and law enforcement’s interactions with protestors.”

We did not discuss the litigation, or any specific allegations raised therein, with DPS. We did, however, discuss recent changes to the State Patrol’s policies and practices regarding demonstration management and, specifically, as concerns relationships with the media in the context of the TRO, which enjoined DPS from:

arresting, threatening to arrest, or using physical force—including through use of flash bang grenades, non-lethal projectiles, riot batons, or any other means—directed against any person whom they know or reasonably should know is a Journalist [citation omitted], *unless* the State Defendants have probable cause to believe that such individual has committed a crime. For purposes of this Order, such persons shall not be required to disperse following the issuance of an order to disperse, and such persons shall not be subject to arrest for not dispersing following the issuance of an order to disperse. Such persons shall, however, remain bound by all other laws[.]³

III. Stakeholder Engagement

Engagement with stakeholders comprised three phases.

First, 21CP met regularly over the course of this project with the executive branch including representatives from the Department of Public Safety and the Attorney General’s Office. These meetings focused on scoping the issues for review, the perspectives of these officials and their offices as to events that transpired over the summer, and to understand changes that had already been implemented in policy and/or practice with respect to crowd management and media relations responsive to

³ *Id.*, fn. 2 at p. 19.

the summer protests. Additionally, 21CP conducted targeted meetings with individual officials to better understand specific issues.

Second, 21CP conducted a survey of journalists and other media providers to inform the structure and agenda for this phase of stakeholder engagement.

Third, guided by the survey results, 21CP conducted four focus group sessions with interested media participants. Two groups comprised media representatives who provided their contact information; two other groups were coordinated through the assistance of Leita Walker, Trial Attorney, Media and Entertainment Law Group of Ballard Spahr, LLC. In addition, 21CP conducted follow-up interviews with Mickey Osterreicher, General Counsel to the National Press Photographers Association (NPPA), and staff from the Committee to Protect Journalists (“CPJ”), including Katherine Jacobsen, U.S. Research Associate and Michael De Dora, Washington Advocacy Manager.

A. Survey

The media survey was designed as part of an effort to co-create an effective engagement model for future events and demonstrations, to explore areas of opportunity and common goals for further discussions, and to inform a framework for additional engagement. The survey was sent via email to media contacts identified by DPS on Thursday, May 6, 2021, and closed on Wednesday, May 12, 2021, thus active for one week (including one weekend). Overall, 156 media representatives responded to all or part of the survey, with 54 completing the survey in full.

1. Respondents

The respondents identified as primarily (74%) local media. Another ten percent identified as community media, which 21CP believes are likely also local. Thirteen percent identified as national media. The remaining four percent of respondents, identifying as independent journalist, member of public multi-lingual media, and “association,” did not indicate whether they are local or national; however, the numbers are so small as to be not materially significant to the survey results.

	Percent	Count
National Media	12.5%	10
Local Media	73.8%	59
Community Media	10.0%	8
Other - Write In	3.8%	3
	Totals	80

Ninety-four percent of respondents reported that they belonged to an organization; only six percent identified as freelance. Forty-seven respondents (64% of those belonging to an organization) identified their organization.

Sixty-seven respondents answered as to what medium they worked in. Most (55%) were in print media⁴, followed by on-line publication (44%).

Value	Percent⁵	Count
Print	55%	37
Online publication	43.8%	35
Television	27.5%	22
Radio	23.8%	19
Photography	22.5%	18
Social Media/Blogger	16.3%	13
Other - Write In	12.5%	10
Podcast	7.5%	6

2. Preferred Forum for Participation

Fourteen respondents were disinterested in participating in further discussion. Of those who were interested in continuing engagement, sixty percent favored a smaller focus group forum. This informed our decision to proceed with focus groups, being also, in 21CP’s experience, a more productive forum for community engagement, as

⁴ Due to an error omitting “Print” as an option when the survey was released, the seven write-in answers of print were manually added to the “Print” value.

⁵ As multiple selections were possible, the percentages do not total 100%.

the smaller groups are more intimate, more people are heard, and the forum is more flexible and can incorporate emerging priorities.

Nearly three-quarters (72%) were interested in meeting directly with public safety officials; 12 respondents were not. Although 21CP offered one focus group event without any DPS personnel present that forum was not well-attended.

3. Priority Topics for Discussion

Across respondents, high priority topics for discussion related to Media Access, Media Credentialing, Enforcement Action, Safety Guidelines, Field Public Information Officers (PIOs), and the Complaints Process. Overall, however, there was broad support for all of the selected topics. Additional suggestions included training around the First Amendment, Operation Safety Net, lessons learned from other jurisdictions, improving multi-lingual communications, safety and security for journalists and property, and cross-agency accountability for mistreating the press.

Value	Percent	Count
Media Access	94.7%	54
Media Credentialing	71.9%	41
Enforcement Action ID Procedures (Credentials, clothing etc.)	59.6%	34
Development of Safety Guidelines	52.6%	30
Field PIO	52.6%	30
Complaints Process	52.6%	30
Dispersal Order Policy and Procedures	50.9%	29
Ombudsman/Media Liaison	45.6%	26
Joint Training Opportunities	33.3%	19
Development of Training Curriculum	29.8%	17

21CP framed, but did not limit, discussion sessions around these priority topics and responses to the open text questions in the survey. All participants were provided opportunity to identify any other topic areas for discussion.

B. Focus Groups

Four focus group sessions were facilitated by 21CP and, due to the COVID-19 pandemic, held virtually. Three sessions included DPS personnel; the other did not. The goal of these sessions was to co-create an effective and solution-oriented engagement model for media and public safety officials to address prioritized topics from the survey.

All focus group sessions were grounded in three agreed-upon principles:

- To assume positive intent. Participants are here to work collaboratively and brainstorm about the future.
- To focus on the future. The goal of this gathering is to craft solutions. Debating grievances will foster division and impede progress.
- Anonymity. Although these sessions would be newsworthy, it was agreed that candid conversation was best fostered by not attributing statements to individual participants; participants, however, were free to report out on content, or what was said.⁶

At the start of each session, all participants introduced themselves and their roles within their organizations. Participants included individual journalists, attorneys representing media,⁷ and media executives and managers, as well as senior State Patrol and DPS officials.

C. Issues Discussed

1. Defining “Media”

Difficulty defining “media,” “press,” or “journalist” was a common issue discussed across all groups. While on one hand the court, for purposes of the TRO, provided guidance to DPS in identifying members of the press, the TRO does not reach the foundational question as to who may qualify as “press” or “media” (or don the “indicia of being a Journalist”):

⁶ Where participants are named in this report, it is with their express permission.

⁷ The plaintiffs in the *Goyette* litigation were invited but chose not to participate.

To facilitate the State Defendants' identification of Journalists protected under this Order, the following shall be considered indicia of being a Journalist: visual identification as a member of the press, such as by carrying a professional or authorized press pass or wearing a professional or authorized press badge or other official press credentials or distinctive clothing that identifies the wearer as a member of the press. These indicia are not exclusive, and a person need not exhibit every indicium to be considered a Journalist under this Order. The State Defendants shall not be liable for unintentional violations of this Order in the case of an individual who does not carry or wear a press pass, badge, or other official press credential or distinctive clothing that identifies the wearer as a member of the press.

Focus group participants diverged as to the extent to which “non-traditional” media should be included in this class. Many respondents argued for expanded credentialing beyond “mainstream media,” including blogs, online news sites, and alternative fora. Others maintained that official credentials should be reserved for “legitimate press.” One participant in the latter camp suggested that non-traditional media should not have the same access as established press because “police and media share a common lack of legitimacy right now and [] both are working to restore their credibility.” Some advocated that only media that adhered to codes of media ethics⁸ – including objectivity – should be included as “press.”

DPS perspectives generally fell along three lines. On one hand, DPS personnel noted that they have no ability to vet legitimacy in the field, in the middle of rapidly evolving and often chaotic circumstances. On the other hand, they stressed the need for clear definition: if “everyone is the press, then no one is the press.” One participant explained that media are not acting as a member of the public when reporting on demonstrations. Another recommended the definition set forth in the Goyette TRO – “any person whom [the State Defendants] know or reasonably should know is a Journalist.” The difficulty in crafting a precise definition was universally acknowledged, as was the potential for individuals claiming press status in order to circumvent legitimate public safety restrictions (DPS provided examples of individuals engaging in violence while under the media “cloak.”) However, almost all agreed that acts of violence should be specifically addressed by law enforcement rather than restricting the category of who qualified as media.

⁸ <https://nppa.org/code-ethics>

2. Media Credentialing

Separate but related to the issue of who might be entitled to be credentialed as media was the issue of credentialing from a logistical and practical perspective. While some agencies previously approved a format for press credentials that was provided to media organizations (e.g., during Operation Safety Net), which was appreciated by those attending the focus groups, participants also noted that those credentials often did not serve them well in the field. Some noted that in practice, credentials seemed meaningless. As one reporter stated, speaking to protests in Brooklyn Center, “Failure to have a piece of paper wasn't the problem – these were bona fide credentials. No reasonable officer would deny they were media. It just didn't matter to them.”⁹ Others expressed concerns beyond law enforcement indifference, believing that showing credentials may in fact expose them to being targeted by police if they identified themselves as press. Participants cited lawsuits alleging retaliatory use of force by law enforcement on media. Others, on the other hand, were concerned about hostility from demonstrators against press whom they deemed unsympathetic to their cause. It was noted that media organizations are increasingly providing security services for reporters or advising them to travel in pairs for safety.

3. Public Information Officer

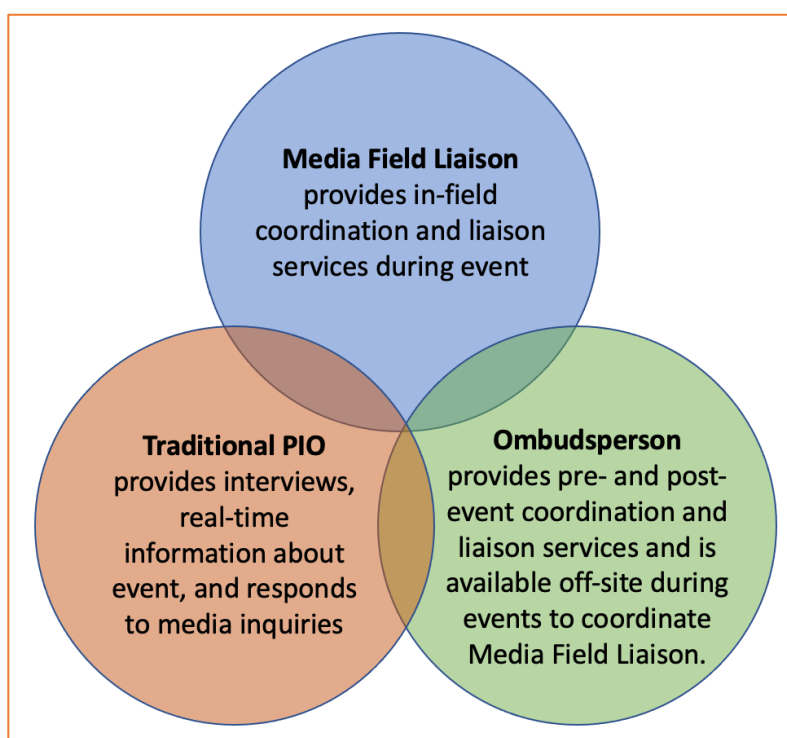
The idea of an in-the-field Public Information Officer, which we rename here as **Media Field Liaison**¹⁰, deployed to manage in-field conflicts and provide real-time information was almost unanimously well-received by participants. Many suggested that this person would be maximally beneficial if supported with an Ombudsperson to coordinate briefings pre- and post-event and to coordinate media access to the Media Field Liaison. As one reporter commented, “Would love a field PIO. We really had no clue who to call. We called every public official we had. It is important to have designated people to contact when the situation is playing out.” Another stressed the importance of a MFL on-scene, not just “monitoring the event from home on a cell phone.” Another noted PIO reluctance to “cross the lines” and talk with media in the

⁹ During the focus groups, it was acknowledged that defining “them” was difficult in the mutual aid context and many criticized the Sherriff's Office for the Brooklyn Center event, not the State Patrol. As mentioned elsewhere, our scope of work and focus has been on the State Patrol, but we hope this work may be useful to other agencies that collaborate in mutual aid.

¹⁰ During the drafting of this report, it became clear that the term “Field PIO,” was too confusing with the traditional role of a PIO. The Media Field Liaison needs to be available to coordinate between law enforcement and media in the field and should not duplicate PIO responsibilities.

middle of the demonstration. It is critically important that the traditional role of a PIO as the “talking head” of the department be separated from this field function – the MFL is there to facilitate the events on-scene as they unfold and directly engage.

As such, we envision three distinct roles that work collaboratively.



4. Transparency

Closely associated with support for an in-field PIO were criticisms about a lack of transparency by law enforcement, not only in the form of information in the field but greater disclosure of early objective evidence. While not directing any specific concern at the State Patrol, one participant acknowledged law enforcement concerns that early information is almost always incomplete, and often later shown inaccurate, but urged that such information should be released, nonetheless.

5. Training

While several participants observed that media organizations were increasingly providing in-house trainings – including common topics such as safety, equipment, what to do/not to do, and identification (or “who you represent”) – many pointed to a need for expanded training for law enforcement on media rights and supported cross-

training with media and law enforcement. Mickey Osterreicher, General Counsel to the NPPA, participated in multiple sessions and offered information about grant funding from the Knight Foundation and the Press Freedom Defense Fund for such training.¹¹ We understand that DPS will continue to communicate with Mr. Osterreicher to further explore these opportunities.

The concept of joint training between law enforcement and media was discussed favorably. Several participants noted the challenge of coordinating agencies across a seven-county Metro area, and even more so, the difficulty of mandating common policies and tactics. Others referenced Operation Safety Net¹² as a good model to coordinate multi-agency resources. It should be noted that DPS officials embraced the concept of joint training but cautioned that their authority was limited to state agencies.

IV. Discussion and Recommendations

1. Defining Media and Credentialing

Because the ability of law enforcement to identify, and thus accommodate, media in the midst of dynamic circumstances hinges in large part on the visible display of credible indicia of media affiliation, the questions of how to define “media” and determine credentialing of media (the “who is entitled to credentials”) are necessarily intertwined. Particularly with the proliferation of freelance journalism through online weblogs (“blogs”), the increased “livestreaming” of events on social media sites, and other forms of digital media, the distinction between “traditional” and “non-traditional” media is a matter of evolving debate.

Historically, determinations as to whether an individual falls within the protections and privileges afforded to the media under the First Amendment are guided by analyses in the context of “Shield Laws” that provide protections to media against compelled disclosure of sources of information provided in the process of newsgathering. (While there is no federal shield law, 49 of the 50 states and the District of Columbia have codified protections for reporters.¹³ In Minnesota, this

¹¹ <https://nppa.org/news/nppa-instruct-police-and-journalists-about-right-record-200000-new-funding>

¹² <https://safetynet.mn.gov/Pages/frequently-asked-questions.aspx>

¹³ While Mississippi has not enacted a shield law, its courts do appear to recognize a qualified privilege against disclosure. *Eason v. Federal Broadcasting Co.*, 697 So. 2d 435, 437 (Miss. 1997) (recognizing qualified privilege for reporters).

privilege is codified at Minn. Stat. Sec. 595.023, which protects from testimony any “person who is or has been directly engaged in the gathering, procuring, compiling, editing, or publishing of information for the purpose of transmissions, dissemination, or publication to the public.”)

While the protection is perhaps clear on its face, it does little to guide matters of credentialing or to ease the difficulty for law enforcement of distinguishing, in the field, who among the thousands who may be livestreaming or recording falls into the category of those entitled to special access. (Recall the comment offered in one focus group that “if everyone is press then no one is press.”) The ambiguity of Minnesota’s statute for purposes of this discussion, in establishing the privilege without delineating the parameters of the class protected, is, however, neither unique to Minnesota nor better addressed by any state that we have reviewed. Nationwide, these determinations have been patchworked together through credentialing practices by government officials or agencies that appear to consider *bona fide* (for lack of a better term) news entities along discrete analytical lines, including the type of medium represented (*e.g.* newspapers, radio, television); employment status (employed by or on contract with a news organization); purpose of the newsgathering effort (*e.g.*, whether information is being gathered with the goal of distributing information to the public); or the content of the publication (*i.e.*, whether the matter covered is a matter of public interest).¹⁴

The draft model policy recently released by the MN Board of Police Officer Standards and Training (“POST Board”) ¹⁵ on Public Assembly and First Amendment Activity¹⁶ both tracks Minnesota law and incorporates the language adopted by the federal court in providing for visual identification of members of the media:

Media means any person who is an employee, agent, or independent contractor of any newspaper, magazine or other periodical, book publisher, news agency, wire service, radio or television station or network, cable or satellite station or network, or audio or audiovisual

¹⁴ For a good overview, see Hermes, Jeffrey and Wihbey, John and Junco, Reynol and Aricak, Osman, *Who Gets a Press Pass? Media Credentialing Practices in the United States* (June 5, 2014). Berkman Center Research Publication No. 2014-11, Available at SSRN: <https://ssrn.com/abstract=2451239> or <http://dx.doi.org/10.2139/ssrn.2451239>

¹⁵ The POST Board is independent of DPS, with membership defined under Chapter 626.841 MN Statutes. See <https://www.revisor.mn.gov/statutes/cite/626.841>.

¹⁶ <https://www.wyden.senate.gov/imo/media/doc/HEN21909.pdf>

production company, or any entity that is in the regular business of news gathering and disseminating news or information to the public by any means, including, but not limited to, print, broadcast, photographic, mechanical, internet, or electronic distribution. For purposes of this policy, the following are indicia of being a member of the media: visual identification as a member of the press, such as by displaying a professional or authorized press pass or wearing a professional or authorized press badge or some distinctive clothing that identifies the wearer as a member of the press.¹⁷

This policy does not, however, provide clear standards as to who may authorize, and to whom may be issued, the press pass, press badge, or other distinctive clothing referenced.

Recommendation: DPS should work with media to create and make a standardized non-mandatory media credential available to media organizations and Mutual Aid partners for distribution.

The purpose of this standardized credential is to provide an easily recognizable format for the State Patrol and other law enforcement agencies. The credential should be *an option* to meet identification requirements but cannot be mandatory and training should make clear that other indicia are also sufficient.

The credential should be made available to media organizations and police departments to distribute. However, DPS and the State Patrol should not be in the business of vetting such requests.¹⁸

Instructions for use of the credential should make clear that media asserting press rights need to produce and display the credential (or other indicia) at the time they are asserting the right, but that the credential need not be continually displayed during the event. Importantly, as discussed above, the instructions must also make clear that the credential is for legitimate use in a press capacity and any acts of violence or property destruction, or attempt to obstruct law enforcement, will remove the privilege associated with the credential.

¹⁷ https://www.aclu-mn.org/sites/default/files/field_documents/goyette_tro_granted.pdf

¹⁸ While some have concerns that no vetting will occur, consider that currently some asserting that they are media are simply writing “Press” across their jackets in electrical tape. Ultimately, we are seeking a standardized, easily recognized credential, but the behavior of the individual must also be consistent with media activities.

While the recommendation here is for DPS to take the lead on this, what is important is that Minnesota, in some capacity, develop an easily recognized media credential. It well may be that POST should develop this in conjunction with Draft Model Policy instead of DPS taking the lead, but DPS will need to coordinate that effort.

2. Public Information Officers/Ombudsperson/Media Field Liaison

The importance of creating a mechanism for on-scene dialogue and the delivery of effective and efficient communication cannot be understated. While long recognized as a critical component of a demonstration management schema,¹⁹ the ability to not just convey, but assure widespread dissemination of, information remains a challenge, particularly at a time where singular perspectives, livestreamed amongst crowd members, can have near-immediate impact on crowd dynamics and behavior.

Buoyed by the success of such programs overseas, the concept of “dialogue officers”²⁰ is closely aligned with the recommendation for Media Field Liaison and ombudspersons that was so positively endorsed by the focus groups here. As discussed above, the ombudsperson (or persons) coordinates the work of the MFL, but could also oversee and coordinate the dialogue officers. The ombuds entity is essentially the operational command for engagement with the press and the community. Developed by the Swedish police and now common across the European Union, these dialogue units support other operational units pre-, during, and post-event by engaging in oral and informal communication with event organizers and crowd members to convey information, better understand and relay crowd intent, and to explain what may be going on with police tactics. Such specialized dialogue officers have been shown effective in preventing confrontation during potentially volatile events²¹ and are

¹⁹ See, e.g., *Police Management of Mass Demonstrations: Identifying Issues and Successful Approaches*, Police Executive Research Forum.
https://www.policeforum.org/assets/docs/Critical_Issues_Series/police%20management%20of%20mass%20demonstrations%20-%20identifying%20issues%20and%20successful%20approaches%202006.pdf

²⁰ See, *Dialogue Police, Experiences, observations and opportunities*, Swedish National Police Board, April 2010.
https://static1.squarespace.com/static/5437a800e4b0137bd4ed4b13/t/594750011b10e3c4c96e684c/1497845774724/Dialogue_bok100630Webb.pdf

²¹ Havelund et al. (2016) *Not all cops are bastards – Danish football supporters’ perception of dialogue policing*. European Police Science and Research Bulletin, Issue 15.

central to many recommendations emerging in the United States in response to last summer's demonstrations.²²

As discussed above, we recommend three distinct roles for police-media interactions: a traditional PIO, who works out of headquarters to provide information to media generally, to provide interviews, and to respond to media inquiries on a routine basis; an Ombudsperson to provide coordination around specific events, including before, during, and after, and who is in communication with the Media Field Liaison; and finally the Media Field Liaison, who in an on-the-ground resource to engage with media, resolve conflicts in the field, and who can be the eyes and ears of the Ombudsperson. This position must have the apparent and actual authority to resolve issues in real-time.

Please refer to the diagram on page 9 above for a visual representation.

Recommendation: As part of its crowd management program²³, DPS should include, in some combination, the Ombudsperson and Media Field Liaison recommended by focus group members as well as further explore how such positions might support/be supported by specially trained dialogue officers in the field.

3. Crowd Management Policy

As discussed above, the Minnesota Board of Peace Officer Standards and Training (POST) formed an ad hoc working group in May 2021 to develop a draft model policy on public assembly and First Amendment Activity.²⁴ After reviewing the policy, 21CP solicited additional feedback from CPJ, Mickey Osterreicher, and Leita Walker on the Post Draft Model Policy. Two things are important to note: first, the draft model policy is not in final form and is still being discussed; and second, once finalized, the

²² See, e.g., *Sentinel Event Review of Police Response to 2020 Protests in Seattle*, Office of the Inspector General.
<https://www.seattle.gov/Documents/Departments/OIG/Policy/OIGSERWave1Report072221.pdf>

²³ We note that the scope of 21CP's engagement is limited to police-media relationships. There are numerous other aspects of crowd management that should be considered, such as operational philosophy, use of force guidelines including use of less lethal, how to incorporate specialized units such as SWAT, bike officers, and other resources into a coherent plan, how to effectively use community marshals, how to train, and many others. We do not purport to address any of these beyond our scope.

²⁴ <https://www.wyden.senate.gov/imo/media/doc/HEN21909.pdf> at 12 (Background on Draft Model Policy).

policy will be binding on DPS. As such, while recognizing that DPS is not the lead agency in this policy development, it is important for DPS to engage in the development of the policy as much as possible and we provide our review of some critical sections below.

Recommendation: The State Patrol should continue to engage with the POST on the development of the MN POST Draft Model Policy focused on media²⁵, with some suggested revisions.

Overall, the POST Draft Model Policy is strong regarding rights of the media, and Section 7 specifically delineates engagement with media:

- A. The media have a First Amendment right to cover public activity, including the right to record video or film, livestream, photograph, or use other mediums.
- B. The media must not be restricted to an identified area and must be permitted to observe and must be permitted close enough access to view the crowd event and any arrests. An onsite supervisor/incident commander may identify an area where media may choose to assemble.
- C. Officers will not arrest members of the media unless they are physically obstructing lawful efforts to disperse the crowd, or efforts to arrest participants, or engaged in criminal activity.
- D. The media must not be targeted for dispersal or enforcement action of their media status.
- E. Even after a dispersal order has been given, clearly identified media must be permitted to carry out their professional duties unless their presence would unduly interfere with the enforcement action.

However, there are additional opportunities that would strengthen the Model Policy.

²⁵ Again, 21CP focused on police-media relationships and rights of the press when reviewing this policy. While there may be other valuable aspects to the policy, here we only address the media specific parts of the policy.

The policy should reference freedom of the press consistently throughout.

The Purpose Section (1), properly sets forth the First Amendment’s protections, including the rights of free assembly, free speech, and free press. However, the Policy Section (2), requires that the law enforcement agency “uphold the constitutional rights of free speech and assembly,” but omits any reference to press. Similarly, the definition of “First Amendment Activities”²⁶ includes “freedom of speech, association, and assembly” but again omits freedom of the press. Consistent with what we heard throughout our engagement, consistent with the rest of the Draft Model Policy, and consistent with the text of the First Amendment itself, the freedom of press should be reinforced throughout.

Consistent with the above, the policy should clarify that press credentials need not be displayed at all times but only when the press right is asserted.

Section 3(k) defines indicia of being a member of the media as:

visual identification as a member of the press, such as by displaying a professional or authorized press pass or wearing a professional or authorized press badge or some distinctive clothing that identifies the wearer as a member of the press.

While this aligns with the discussion and recommendations above, the definition seems to imply on-going display or wearing of indicia. That should be clarified to allow presentation of credentials when press status needs to be asserted, but not requiring constant display to alleviate media concerns that they will be targeted *because* of their credentials either by demonstrators or law enforcement.

The Officer Conduct section should be updated to preclude negative verbal engagement with the press, require professional demeanor towards the press, and prohibit interference with press rights to observe and document the police.

Currently, the POST Draft Model Policy prohibits negative verbal engagement or interference with the rights of the public and requires professional demeanor and neutrality with respect to “crowd members.” These same requirements should explicitly apply to press to help ensure respect, professionalism, and improve trust between media and law enforcement.

²⁶ As a side note, and purely for technical accuracy, “First Amendment Activities” should be “First Amendment Protected Activities.”

Similarly, in Section 9(c), “individuals should not be singled out for photographing or recording simply because they appear to be leaders, organizers, or speakers.” Again, media should be added to this protective list, but as always, if the person identifying as media becomes active in riotous or disruptive behaviors, they are subject to law enforcement action as appropriate.

The policy should include training requirements.

The POST Draft Model Policy does not include any training requirements; any policy adopted by the State Patrol should clearly set forth a commitment to regularly train on First Amendment Protected Activities, including those of the media.

The policy must account for real world circumstances.

The POST Draft Model Policy also requires a significant caveat. While the intent of the policy is to allow media as much unfettered opportunity to view and report on real world events as they unfold, the real world is messy and does not lend itself to perfect application of any policy.

This is especially true in the crowd management context, where events can be unpredictable and unfold rapidly. There will be times where members of the media are arrested or detained despite best efforts to allow them to do their job. Similarly, as discussed above, members of the media are not required to wear identification at all times and therefore there will be legitimate circumstances where officers simply do not know who is a member of the media.

The test of any system is not whether it operates perfectly, but whether it is designed to self-correct as efficiently as possible. As such, when mistakes are made, the Media Field Liaison would be tasked to address and correct such errors quickly in the field.

As such, the policy should be developed with some flexibility for error and should not subject officers who are acting in good faith to balance the legitimate interests to inflexible disciplinary consequences. On the flip side, the policy must hold those officers (or departments) accountable who negligently or intentionally violate its terms.

4. Transparency

Although increased transparency overall goes beyond the topic of law enforcement-media relations, it was a common refrain from focus group stakeholders.

Nationally, there is a movement towards greater and timely transparency at the state level. For example, California requires release of body worn camera recordings within 45 days of the incident²⁷. Governor Lamont of Connecticut issued an executive order requiring release of state police body worn camera evidence within four days²⁸. Colorado requires video evidence to be released within 21 days²⁹. Municipalities and police departments have also moved towards greater transparency with video evidence. As examples, the D.C. Metro Police release video evidence within five days of the incident³⁰; the Seattle Police Department requires release of objective evidence within 72 hours³¹.

There are many logistical concerns and the information release policy that applies to any jurisdiction must be specifically tailored. In Minnesota, release of data is governed by Minnesota Statutes, Section 13, and in particular, Body Camera Data is governed by Section 13.825. That section states “Body cam data are generally private/nonpublic,” but also clarifies that “[l]aw enforcement agencies may release any not public body cam data to the public to aid law enforcement, promote public safety, or dispel rumor or unrest.” While DPS must follow the law, we recommend a bias towards releasing information objectively as early as possible. The State Patrol currently allows a representative of the decedent in fatal deadly force incidents to view the video evidence within five days.³²

²⁷ Cal. A.B. 748 (2018).

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB748.

²⁸ Press Release, Governor Ned Lamont, *Governor Lamont Signs Executive Order Modernizing Police Strategies and Programs* (June 15, 2020), <https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2020/06-2020/Governor-Lamont-Signs-Executive-Order-Modernizing-Police-Strategies-and-Programs>

²⁹ Colo. S.B. 20-217, https://leg.colorado.gov/sites/default/files/2020a_217_signed.pdf.

³⁰ D.C. Act 23-336 (2020), https://lms.dccouncil.us/downloads/LIMS/45307/Signed_Act/B23-0825-Signed_Act.pdf.

³¹ <https://www.seattle.gov/police-manual/title-1---department-administration/1115---media-release-officer-involved-shooting>

³² Current General Order 21-30-023 states:

“In instances where a member has used deadly force, as defined by Minn. Stat. § 609.066, subd. 1, against an individual and the individual has died as a result, the State Patrol will allow the representative of a decedent an opportunity to view BWC video within 5 days of the

What is important is that the protocols are developed ahead of time and not during a crisis, and that they are shared publicly. In our experience, the increased legitimacy and trust that occurs with transparency far outweighs any logistical concerns of releasing objective evidence in matters of public interest as soon as possible. Providing objective evidence fills the speculative gaps for members of the public and can help alleviate social unrest around critical incidents.

Recommendation: DPS and the State Patrol should develop a clear media policy stating what will be released and when the information will be provided.³³

The policy should include the following:

- Specific timing of release of information, regardless of whether the objective evidence appears favorable or dis-favorable to the State;
- Clear parameters for any statements by any member of the department to ensure that the statements are factual and do not pre-judge the incident³⁴;
- A prohibition on releasing the criminal background of the subject of the critical incident, except as specifically relevant to the incident itself; and
- A commitment to regularly update the public on developments in the investigation.

incident or a request. The viewing must be in accordance with the Minnesota Government Data Practices Act, Minn. Stat. ch. 13 and may require redaction.”

³³ This point was raised several times by stakeholders and is important, but technically is beyond the scope of crowd management and media.

³⁴ *Stop Police False Narratives About Officer-Involved Deaths*, Deborah Jacobs. <https://deborahjacobs.medium.com/stop-police-false-narratives-about-officer-involved-deaths-d34cb539ee25>.

5. Training

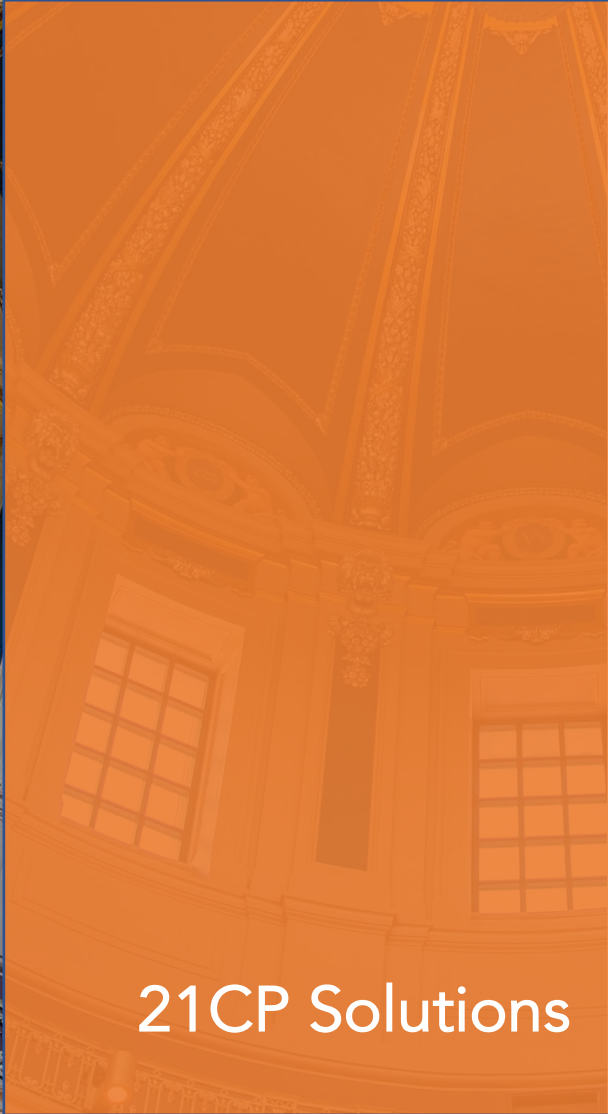
Recommendation: DPS and the State Patrol should continue to coordinate regional trainings on crowd and demonstration facilitation, to include media rights.

All stakeholders, including media and law enforcement, saw value in offering joint trainings regularly. Policies without training are ineffective. Also, training must be on-going to provide consistent instruction to new officers and those who change roles within the organization. There is an opportunity for DPS to take the lead in this effort, especially in conjunction with the release of the POST Model Policy. Additionally, this training will, of course, go well beyond media issues, but the topic of engaging with the media during demonstrations should certainly be a component of more comprehensive curriculum.

V. Conclusion

Again, 21CP offers these recommendations with sincere gratitude for the efforts of the community and media stakeholders who gave their time and input. We also recognize the efforts of DPS and the State Patrol to adapt in the face of evolving community expectations around how demonstrations are facilitated and their commitment to ensuring the rights of all, including the media, are respected, both on paper and in practice.

We recognize that demonstration management practices are rapidly evolving during changing public expectations nationally and locally and that these recommendations are limited to one aspect of overall demonstration management – engagement between media and law enforcement. However, we hope these recommendations will provide tools to improve coordination between media and law enforcement during demonstrations and promote better results for the press, the police, and the public.



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